

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUSTIN T. MAHER,

Plaintiff,

-against-

AFFIDAVIT

Case No:14 CV 3586 (VLB)

CAITLIN H. RAILO and
QUALITY BUS SERVICE, LLC,

Defendants.

STATE OF NEW YORK)
)ss.:
COUNTY OF ORANGE)

MICHAEL MARTUCCI, being duly sworn, deposes and says that:

1. I am a Co-Owner and Manager of the defendant QUALITY BUS SERVICE, LLC ("Quality"). Quality is in the business of providing student transportation to schools and school districts. I am a New York State Department of Motor Vehicles Article 19-A Examiner; a New York State Certified School Bus Driver Instructor; and, I am licensed to operate a school bus. I am familiar with the applicable State of New York and Federal requirements for hiring, supervision and training of school bus drivers. I am also familiar with the hiring, training and supervision by Quality of its employee school bus drivers, including the co-defendant CAITLIN H. RAILO ("Railo"). I make the statements in this Affidavit based on my personal knowledge, observations, experience, and information available to me based on my review of the business records maintained by Quality, which include the documents attached as exhibits to this Affidavit.

2. On or about July 31, 2012, Railo submitted an Application for Employment to

Quality, a true and complete copy of which is annexed hereto as **Exhibit A**.

3. When considering an applicant as a potential school bus driver, Quality is required to review the applicant's work history for the prior three (3) years in accordance with 15 NYCRR 6.1. In her Application for Employment (**Exhibit A**), Railo gave her work history, which included employment at Kaltec, Inc. from August 2011 through March, 2012; Riverside Support Center from July 2009 through August 2011; and, staying home caring for her daughter and nephew. Railo's work history, which included a gap in employment when she stayed at home caring for her child, is not uncommon for an applicant school bus driver. I considered Railo's work history and questioned her about it during her job interview. There was nothing contained in the work history provided to me by Railo which suggested to me that she was unfit to operate a school bus.

4. There is no requirement that applicants have prior commercial driving experience in order to become a school bus driver. However, when a prospective hire does have commercial driving experience, additional investigation into his or her commercial driving work history is necessary. Commercial driver applicants are required to give prospective employers information on all previous driving jobs held in the past ten (10) years, and the employer must contact these previous employers regarding the driver's work history (49 CFR 383.35). Railo had no prior commercial driving employment and was not a commercial driver applicant at the time of hire; therefore, I was not required to investigate prior driving jobs held by her (because none existed).

5. As part of the screening and hiring process of new school bus drivers, including Railo, Quality reviews applicants' driving history, including any traffic convictions or accidents for a minimum of three (3) years. When additional driving history is available,

it is also considered.

6. In Railo's Application for Employment to Quality (**Exhibit A**), she listed one (1) Motor Vehicle Accident in the past three-years: in 2010, she was involved in a low speed rear-end accident with no resulting injuries or death. I considered that accident and questioned her about it during her job interview. The information provided to me by Railo about that motor vehicle accident did not suggest to me that she was unfit to operate a school bus.

7. Also included in Railo's Application for Employment (**Exhibit A**), she listed a 2012 Vehicle and Traffic Law conviction in the Town of Deerpark, New York; and, a 2012 traffic conviction in Pennsylvania. I considered those traffic violations and questioned her about them during her job interview. The information provided by Railo about those traffic violations did not suggest to me that she was unfit to operate a school bus.

8. Quality also obtained Railo's driving record abstract from the New York State Department of Motor Vehicles ("DMV"). Annexed hereto as **Exhibit B** is a true and complete copy of Railo's driving record abstract obtained from the DMV. Quality has no discretion or control over the length/period of time documented in the driving record abstract provided by the DMV; we can only review the information provided to us by the DMV. Based on the information contained in the abstract of driving record obtained from the DMV, Railo was qualified to drive a bus (15 NYCRR 6.28).

9. On or about October 26, 2012, the DMV determined Railo was qualified to drive a school bus. Included in the hiring process, I verify a prospective bus driver's eligibility for employment as a bus driver with the DMV. There is an online portal provided by the DMV where I enter the applicant's driver identification number (the unique nine-digit

number on the individual's driver's license) into the DMV's database. The only information I provide to the DMV through this portal is the applicant's nine-digit identification number. The DMV then determines whether the driver is qualified to drive a school bus. In order to be considered eligible for employment as a school bus driver, a new school bus driver, including Railo, must obtain the necessary commercial driving license with necessary P & S (passenger and school) endorsements. Railo obtained a commercial driver's license from the DMV with P & S endorsements, as indicated by the DMV online portal qualifying her as "school qualified." In order to obtain that commercial driver's license with P & S endorsements, she would have had to successfully pass a road driving test administered by the DMV.

10. Annexed hereto as **Exhibit C** is a true and complete copy of the DMV's 19-A Driver Activation Receipt, indicating that Railo was "school qualified" by the DMV as indicated by her being successfully activated via the DMV's online portal on October 26, 2012.

11. Both Railo's DMV driving record abstract (**Exhibit B**) and the DMV's 19-A Driver Activation Receipt (**Exhibit C**) demonstrate that Railo was fully licensed to operate a school bus by the DMV.

12. A criminal history background check of Railo was performed as a part of the hiring process. A criminal history background check of all applicant school bus drivers, including Railo, is processed through NYS Division of Criminal Justice Services and the Federal Bureau of Investigation. Railo was sent by Quality to the approved NYS vendor, IdentoGo by MorphoTrust USA (previously L1 Identity Solutions) to scan her fingerprints. The results of the criminal history background check are provided by the DMV's Bus Driver

Unit (15 NYCRR 6.4 a). Quality's only involvement in the criminal history background check is scheduling the time when the applicant goes for fingerprinting, and then receiving information from the DMV whether the applicant "passed" the criminal history background check and is qualified to drive a school bus.

13. Annexed hereto as **Exhibit D** is a true and complete copy of the DMV's Final Qualification Notice dated November 2, 2012, received by Quality, confirming that a criminal history review was conducted on Railo pursuant to Article 19-A of the NYS Vehicle & Traffic Law, and that there was no disqualifying conviction and/or potentially disqualifying violation as specified in Section 509-cc of the VTL identified by either the NYS Division of Criminal Justice Services or the Federal Bureau of Investigation. Quality receives no other information from the criminal history background check other than whether the applicant is qualified or disqualified.

14. Included in the hiring process, applicants, including Railo, are subjected to a physical examination and a pre-hire drug screening test. Quality does not conduct the physical exam and drug screening test. The physical examination and pre-hire drug screening test are performed by an independent contractor, Partner in Safety and Medicine, PLLC ("Partners in Safety"), which employs trained medical professionals for that purpose.

15. On October 16, 2012, Railo's physical exam was conducted by Partner's in Safety employee Patricia Ames, NP. Nurse Ames provided Quality with a Report of her physical examination of Railo, in which she certified that Railo was qualified to drive a school bus in accordance with the applicable Federal Motor Carrier regulations. A copy of the report received by Quality from Partners in Safety certifying Railo was qualified to drive a school bus is attached to the Affidavit of Patricia Ames, RN, as Exhibit A.

16. Also on October 16, 2012, while Railo was at Partners in Safety for her employment physical, Partners in Safety collected a urine specimen for pre-employment drug screening in accordance with 49 CFR 382.301. It is my understanding that Partners in Safety then forwarded that urine specimen for laboratory analysis. As a result of that analysis, on or about October 17, 2012, Quality then received from Partners in Safety a report verifying the results of the pre-employment drug screening test. Annexed hereto as **Exhibit E** is a true and complete copy of the report of Results of DOT Controlled Substance Test received by Quality from Partners in Safety, verifying “negative” pre-employment drug screening test results for Railo.

17. Quality has a Policy prohibiting its drivers from operating school buses while under the influence of or affected by alcohol and/or drugs, including prescription medications which they have not previously obtained clearance for from their medical provider. Any medications that a school bus driver are prescribed must be medically cleared by the prescribing physician before the driver is allowed to drive a school bus. The driver is required to notify Quality of any new medications he or she is prescribed once employed by Quality, and obtain medical clearance from the prescribing physician, verifying that the new medication will not adversely affect the driver’s ability to safely operate a school bus.

18. During the Pre-Service Course, drivers are advised of Quality’s policy prohibiting the operation of a school bus while under the influence of drugs and/or alcohol. Drivers are also instructed during the Pre-Service Course that they are required to notify Quality of any new medications they are prescribed, which must be cleared by a medical professional verifying that the new medication will not adversely affect their ability to safely operate a school bus.

19. On an annual basis, Quality performs fifty percent (50%) of random drug tests based on the total number of drivers. For example, if Quality employed one-hundred (100) drivers for a given year, it conducts fifty (50) drug tests during that year. Quality also conducts alcohol testing at ten percent (10%). This random drug and alcohol testing policy is in accordance with Federal Motor Carrier Administration requirements. These random drug and alcohol tests are administered by the medical professionals at Partners in Safety.

20. Whenever there is any reason to suspect that a driver may be under the influence of drugs and/or alcohol, their driving duties are immediately suspended until such time as they submit to and pass a reasonable suspicion drug and/or alcohol screening test. These reasonable suspicion drug and alcohol tests are administered by the medical professionals at Partners in Safety.

21. I previously attended Reasonable Suspicion Supervisor training. Including in that training is instruction on how to detect physical, behavioral, speech and performance cues related to alcohol and drug use. As a manager of Quality, when drug or alcohol use is suspected by one of Quality's employees, I promptly investigate it and do not allow the driver to drive a school bus until they are "cleared" by a drug and alcohol screen administered by Partners in Safety. At no time during Railo's employment with Quality, did she appear to be under the influence of alcohol or drugs.

22. At no time during her employment with Quality, did I receive any complaints about Railo.

23. During the course of her employment with Quality, there were no incidents or disciplinary issues, including any suspected drug use, which suggested to me that Railo was unfit to operate a school bus.

24. At no time during her employment with Quality before the subject accident on February 14, 2013, did Railo provide Quality with any information that she was prescribed any additional medications including Percocet. Had she done so, which she did not, I would have required clearance from her medical provider that those medications would not adversely affect her ability to safely operate a school bus.

25. Under no circumstances would I have, or did I, threaten Railo's employment if she failed to appear for work on February 14, 2013.

26. At no time did I ever threaten Railo's employment as a consequence of her being late or absent from work.

Dated: September 23, 2015


MICHAEL MARTICCI

Sworn to before me this
23rd day of September, 2015.


Notary Public

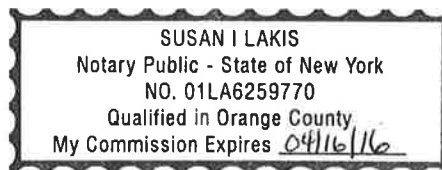


EXHIBIT “A”



Quality Bus Service, LLC.
504 Route 42 PO Box 600
Sparrowbush, NY 12780
(845) 858-2150

Application for Employment

Qualified applicants are considered for all positions without regard to age, sex, race, color, religion, national origin, sexual orientation, disability, marital status, or veteran status.

A DRUG-SCREENING TEST IS REQUIRED FOR EMPLOYMENT

Instructions: Please print in black ink. Be sure to answer all questions. If any question does not apply to you, answer with "No" or "Not Applicable" (N/A).

Date: July 31, 2012

Position Applied for <u>bus Driver</u>	On what date will you be available if your application for employment is accepted? <u>ASAP</u>
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Applicant Information			
Name: Last <u>Railo</u>	First <u>Carlin</u>	Middle <u>H</u>	Social Security Number
Present Address- Street	City	State	Zip Code
Telephone Number and Area Code Home	Are you prevented from becoming lawfully employed in the U.S. because of your visa or immigration status? <u>no</u>		
Have you ever been fired or asked to resign by an employer? <u>yes</u>	If yes, explain: <u>my Kaitec. last year I had to have A major surgery, and had alot of doctor appointments I had to leave</u>		
Have you ever been convicted of a felony? <u>no</u>	If yes, explain.		

* Note: A felony conviction is not an absolute bar to employment

Educational Background	
Name and Location of School or College	
Elementary and Junior High School	<u>Pine Bush</u>
High School and/or G.E.D.	<u>Pine Bush - G.E.D</u>
College	<u>Orange County, Dutchess County</u>
Trade, Business, Correspondence or Graduate School	<u>Boies - M.T.I. - licenced Phlebotomist, med. assistant, licenced security guard - (damon Finch)</u>

Employment History	
Record your present or most recent position first and list back in chronological order.	
Please explain all periods of unemployment.	
Employer Name and Address:	Dates Employed:
Kaltec inc.	From: 8/2011 To: 3/2012
Supervisor's Name, Title and Phone Number:	Salary:
Ms. Mascara (Ms. M.) owner	Starting: 8.25 Leaving: 9.00
May we contact?	Reason for leaving: had to have major surgery I had to have a lot of dr ap.
Positions held- Briefly explain your duties, responsibilities, and number of people supervised:	
started doing office duties, filing & bills. After damage to building due to water damage, I started helping and working in the bakery dept. and on the line	
Employer Name and Address:	Dates Employed:
Riverside Support Center	From: 7/2009 To: 8/2011
Supervisor's Name, Title and Phone Number:	Salary:
Carminc mosca	Starting: 10.00 Leaving: 12.00
May we contact?	Reason for leaving: Facility was shut down
Positions held- Briefly explain your duties, responsibilities, and number of people supervised:	
hired as phlebotomist, then became Administrative Assistant. ran facility by doing all intakes, searches, drug tests, all billing, daily patient logs, pt. transportation, dispense medS, picked up medS.	
Employer Name and Address:	Dates Employed:
T.B.D - school and stay at home mom	From: To:
Supervisor's Name, Title and Phone Number:	Salary:
For years.	Starting: Leaving:
May we contact?	Reason for leaving:
Positions held- Briefly explain your duties, responsibilities, and number of people supervised:	
Employer Name and Address:	Dates Employed:
	From: To:
Supervisor's Name, Title and Phone Number:	Salary:
	Starting: Leaving:
May we contact?	Reason for leaving:
Positions held- Briefly explain your duties, responsibilities, and number of people supervised:	
Additional Experience	
What experience have you had working with or supervising children? Explain. I have a 5 year old daughter, helped raise my nephew, home school my daughter, when I went to college I got certificate for child care & development.	
Have you ever driven a bus? NO	Dates:
If yes, For what company or school district?	

Accident Review for Past 3 Years				
	Date	Nature of Accident (Head-on, Rear End, Upset, ETC.)	Fatalities	Injuries
Most Recent	2010	Rear end, Person trying to roll into wheel	NO	NO
Previous				
Previous				

Traffic Convictions and Forfeitures for the Past 3 Years (Other than parking violations)			
Location	Date	Charge	Penalty
deerpark	5/2012	Parking on pavement	\$100.00
Pennsylvania	3/2012	Speed - 62/55-highway	\$135.00

Activities
List current membership in civic, professional, social, or other organizations.*
I am still helping people to get help from former job. (rehab) checking + helping former clients. I also volunteer for activities at my church and my daughters activities, also library. And working as a quadruplegist
List sports, hobbies, or other interests.*
Writing, painting, restoring antiques, reading, volunteering at church that I attend and spending time with my daughter.

* Exclude those that indicate race, color, sex, age, national origin, religious preference, or marital status.

Summary of Qualifications
This space is provided for you to briefly summarize any additional qualifications you believe are important in considering your application for employment. experience driving large vehicles, I have a great disposition, good with people, children, easily and quickly teachable. I am very attentive and efficient at what I do. I am also willing to work as much and whenever needed.

Applicant's Statement
I certify that all statements made on this Application for Employment and in any subsequently executed medical questionnaire or any other employment documents are true and correct. I understand that any false information that I give may result in termination of my candidacy or any subsequent employment.
I authorize Quality Bus Service, LLC. and its representatives to inquire of all former employers or others who know me or know of me. It is agreed and understood that Quality Bus Service, LLC. and its agents may conduct background evaluations including, but not limited to, criminal history checks from federal, state, or local authorities to ascertain any and all information of concern, whether same is of record or not, and I hereby expressly authorize such inquiries and release all employers and persons named herein from all liability for any damages on account of their furnishing such information.
I acknowledge that any offer of employment is conditioned upon my taking a drug screen and Quality Bus Service, LLC's receipt of satisfactory results of such a test and. If necessary to determine ability to perform essential duties of the position offered, the results of a physical examination.
I certify that I have read, understand, and agree to the above.

Applicant's Signature: <i>Caith Lewis</i>	Date: <i>July 31, 2012</i>
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**Quality Bus Service, LLC.**

201 Charles Street
 Maybrook, NY 12543
 (845) 427-9080

Motor Vehicle Review Consent Form

I understand that I am required to maintain a valid commercial drivers license.

Additionally, I grant Quality Bus Service, LLC the right to review my motor vehicle driving record at any time.

Finally, such record can be forwarded and reviewed by New York State Department of Motor Vehicle personnel, school district personnel for the districts for which I drive, and the insurance carrier(s) for Quality Bus Service, LLC.

My current drivers license is from the state of New York and is 6 Motorist ID Number

My date of birth is 1981
 MM DD YYYY

Employee Name: Carlton Railo

Employee Signature: Carlton Railo

Date: July 31, 2012

EXHIBIT “B”

TODAY'S DATE: 10/26/2012 TIME: 09:43:52

*RECORD EXPANSION FOR: RAILO,CAITLIN,H

CLIENT ID#: 491879925

RAILO,CAITLIN,H DOB: SEX: F
5 WHITE ST APT 2 HEIGHT: 5-5 EYE COLOR: BROWN
PORT JERVIS NY 12771 COUNTY: ORAN
MI #:j

LICENSE CLASS: CDL *B* STATUS:VALID EXPIRATION: 08/12/2015

PROBATION START: 09/13/2010 END: 03/13/2011

CDL ENDORSEMENTS: PASSENGER, SCHOOL BUS

RESTRICTIONS: NONE

***** ACTIVITY *****

FULL LICENSE ISSUED 09/13/2010

CDL B 10/24/2012 ENDORSEMENTS: PASSENGER, SCHOOL BUS

RESTRICTIONS: NONE

CLASS CHANGE: 12/31/1997 NEW: *DJ* OLD: PERMIT

CLASS CHANGE: 08/12/1999 NEW: *D* OLD: *DJ*

DOCUMENT SURRENDERED ON: 03/04/2002 TO NY

RETURNED TO NY ON: 07/08/2002

DOCUMENT SURRENDERED ON: 12/05/2008 TO NY

RETURNED TO NY ON: 08/12/2009

RESTRICTED LICENSE ISSUED 08/12/2009

CLASS CHANGE: 09/13/2010 NEW: *D* OLD: *D*

CLASS CHANGE: 10/24/2012 NEW: CDL *B* OLD:*D*

***** SUSPENSIONS/REVOCATIONS *****

REVOCATION ON: 09/04/2009 OPER W/O INS - INF ORDER #: A0908050000

COMPILED ON: 09/04/2009

CLEARED ON: 09/13/2010 REQUIREMENTS MET

SUSPENSION: 08/22/2008 FLD ANSWER SUMMONS ORDER #: T01005T

LOCATION: ORANGE COUNTY, CITY OF MIDDLETOWN

CLEARED ON: 07/30/2009 SCOFFLAW ANSWERED

***** CONVICTIONS/BAIL FORFEITURES *****

CONVICTION: DISOBEYED TRAF DEV

VIOLATION: 07/10/2012 CONVICTED ON: 08/08/2012

LOCATION: ORANGE COUNTY, TOWN OF DEERPARK

PENALTY: FINE- \$75 POINTS: 2

COMM VEH: NO HAZMAT: NO

CONVICTION: OPER W/O INS - INF

VIOLATION: 08/24/2007 CONVICTED ON: 07/30/2009

LOCATION: ORANGE COUNTY, CITY OF MIDDLETOWN

PENALTY: FINE- \$150

COMM VEH: NO HAZMAT: NO

***** ACCIDENTS *****

ACCIDENT DATE: 03/17/2011 INJURY & PROPERTY DAMAGE COUNTY: ORAN CASE #: 33-811417

POLICE REPORT FILED

*** END OF RECORD ***

EXHIBIT “C”

New York State DMV
 Date: 11/01/2012

19-A DRIVER ACTIVATION RECEIPT

Receipt		New York State DMV
Business ID:	22855	
Business Name:	QUALITY BUS SERVICE LLC	
Federal ID:	26-0833353	
Address:	PO BOX 600 SPARROWBUSH, NY 12780	
Carrier Type:	SCHOOL & NON-SCHOOL	
Contact Person:	MICHAEL MARTUCCI	
Driver CAITLIN H RALLO, Client ID: 491879925, was successfully activated on 10/26/2012 by user S19AZ2855		
<p align="center">EMPLOYER CERTIFICATION</p> <p>This driver meets the applicable qualification requirements as specified in Sections 6.3, 6.4, 6.5 and/or 6.6 of the regulations of the Commissioner of Motor Vehicles.</p>		

EXHIBIT “D”



**NEW YORK STATE
DEPARTMENT OF MOTOR VEHICLES
BUS DRIVER UNIT**

QUALITY BUS SERVICE LLC
ATTN: MICHAEL MARTUCCI
PO BOX 600
SPARROWBUSH, NY 12780

RE: RAILO, CAITLIN H
CID:
DATE: 11/02/2012

FINAL QUALIFICATION NOTICE

The criminal history review that was requested pursuant to Article 19-A of the NYS Vehicle & Traffic Law (VTL) for the school bus driver/applicant named above has been completed.

We are pleased to advise you that no disqualifying conviction and/or potentially disqualifying violation, as specified in Section 509-cc of the VTL, has been identified by either the NYS Division of Criminal Justice Services or the Federal Bureau of Investigation.

EXHIBIT “E”

Partners In Safety...

800 Route 17M
Middletown, NY 10940
845-341-0515 ext. 311

ATTENTION:

Michael Martucci
Quality Bus Service (2103)
P.O. Box 600
Sparrowbush, NY 12780

Participant: Caitlin H. Railo
Participant ID: 223
SSN:

Results of DOT Controlled Substance Test

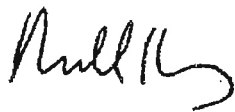
Record Status: Negative
Test Type: Pre-Employment
Collection Date/Time: 10/16/2012 1:53 PM
Batch ID: 20121017
Specimen ID: 0545554262
Date COC Received: 10/17/2012
Sample Type: Urine
Test Panel: 5-Substances

Laboratory: Lab Corp. Of America
69 First Avenue
Raritan, NJ 08869
Collection Site: Partners In Safety
800 Route 17M
Middletown, NY 10940
Specimen Collector: STEPHANIE TOBIN
DOT Admin(s): FMCSA

<u>Test Performed</u>	<u>Result</u>
Amphetamines	Negative
Marijuana	Negative
Phencyclidine	Negative

<u>Test Performed</u>	<u>Result</u>
Cocaine	Negative
Opiates	Negative

This test was performed, recorded, and reported in accordance with CFR 49 Part 40



Russell Kamer, MD

10/17/2012

Verification Date